

**CHILD PROTECTIVE SERVICES
LOCAL CONFERENCE HANDBOOK**

MAY 2006

THE LOCAL CONFERENCE CPS APPEALS HANDBOOK

I. INTRODUCTION

This handbook is designed to serve as a resource for local department of social services directors and designees when conducting local conferences pursuant to section 63.2-1526 (A) of the Code of Virginia. Much of that which follows is the opinion and suggestions of the author and is not binding upon the individual who conducts the conference. When there is a specific authority for opinions and statements made in the handbook, attribution will be made wherever possible.

The language in the recommended documents contained in the Appendices of this handbook are presented only to suggest what is possible, and should not be construed as binding upon any local department. Local departments are encouraged to develop documents unique to their agencies to meet the needs of the local conference process.

II. OVERVIEW OF APPEALS PROCESS

Section 22VAC 40-705-190 of the Virginia Administrative Code describes three tiered appeals process for any individual for whom a local agency makes a “Founded” disposition for investigations. The three tiers described by the Virginia Administrative Code are:

1. Informal Local Conference
2. State Administrative Hearing
3. Circuit Court Appeal

These are the three levels described in Virginia Administrative Code however; the circuit court’s decision is not “final,” as it may be appealed by right to the Virginia Court of Appeals and from there to the Virginia Supreme Court. The state hearing officer clearly renders the final local agency decision, which is not further appealable within the agency, but must go to the court system at that point.

III. PURPOSE OF LOCAL CONFERENCE

The purpose of a local conference is to allow any individual who is founded for abuse and neglect the right to appeal the local agency’s disposition and to present information to refute the disposition decision. The first level of the appeal process is the informal local conference, which is conducted by the director of the local social services agency, or his/her designee. The local conference is the centerpiece of the appeals process because it provides a relatively informal forum for the appellant and the local department of social services to review the local department findings and resolve disagreements about them.

The Department policy states that local conferences shall be conducted with the following four objectives in mind:

1. Resolve differences between the agency and the appellant over the disposition.
2. Explore fully the disposition and the reasons for it.

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3. Explore fully the alleged abuser/neglector's additional information about the disposition and investigation.
4. Facilitate services with the family and alleged abuser/neglector by encouraging informal dispute resolution.

Section 63.2-1526 (A) of the Code of Virginia clearly states that the appellant has the right to introduce new information at the local conference, and that the information presented by the appellant becomes part of the local department's record.

It is clear that the policy and the Code both envision that the conference be informal in nature. As attorneys have become more involved in the process, pressure to make the conference formal has increased. The individual conducting the conference must keep in mind that he/she has complete control over the proceeding and has the authority to dictate the manner in which the conference is conducted. Specific requirements appropriate for judicial proceedings may not be suitable for an informal conference.

For example, berating the character of the CPS worker is not one of the purposes of the informal conference. On these occasions where the appellant uses the conference for this purpose, the appellant should be redirected towards the purposes listed above, and advised that such behavior shall not be tolerated. Additional instructions may be given to the attorney for the appellant regarding the discussions presented.

A. Time Frames

The alleged abuser/neglector must request a local conference within 30 days of receiving notification of the founded disposition(s) of abuse and/or neglect. Failure to meet a specified time may result in the alleged abuser/neglector forfeiting his right to further appeal. When the local department receives a timely request for a local conference, the local department must indicate in OASIS that an appeal is pending.

Section 63.2-1526(A) of the Code of Virginia states that if the local department does not act within 45 days of the receipt of a request to amend the record, the appellant who requested the amendment may request an administrative hearing.

The local director or designee of the local director shall arrange a convenient time for an informal conference with the appellant. If the local department fails to conduct a local conference, then the local department must document the reasons why the local conference did not occur in writing for the record. Information shall be presented to the appellant to emphasize the need to appear at the scheduled time, or to advise the agency of the need for an alternate date.

If the appellant does not show for good cause, the scheduled local conference should be rescheduled. In addition, the appellant can request an extension of the 45 day local conference time frame for a specified period, not to exceed an additional 60 days. This request must be in writing.

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There are three conditions that must be met before the appeal process, at the local level or state level, is automatically suspended pursuant to 63.2-1526(C) of the Code of Virginia:

- a. A criminal proceeding must be pending against the alleged abuse or neglect for whom the local department made the founded disposition.
- b. The criminal proceeding must involve the same victim child or children whom the local department named as the victim child or children in the founded disposition.
- c. The alleged criminal conduct must be the same conduct upon which the local department made the founded disposition of abuse or neglect.

If all three conditions are met, the appeal process is stayed until completion of the criminal process. The Code of Virginia places responsibility on the local department to notify the alleged abuser or neglecter when the criminal proceeding has been completed and the appeal process may resume.

B. Presiding Officer

The local conference shall be presided over by the agency director or his/her designee. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect shall preside over the local conference, pursuant to 63.2-1526(A).

The language of the policy creates some difficulty in smaller agencies where the director often must participate in the staffing of an investigation, and in larger agencies, where agency hearing officers are appointed to whom the investigating worker may not be subordinate.

Objectivity should dictate the manner in which these issues are resolved. The objectivity which results when larger agencies appoint internal hearing officers (designees) more than compensates for the fact that the investigating worker may not be a subordinate of the local designee.

Directors are discouraged from requesting the director of an adjoining department to conduct the local conference when they have been involved in the staffing, except in those unusual circumstances where the director is convinced that he/she can not be impartial. It must be kept in mind that the appellant may present new evidence at the conference which was not available at the staffing.

The director/designee is in charge of all aspects of the conference. Neither the Code nor Department policy gives much direction to the manner in which the conference should be conducted, other than the caution that it should be informal in nature.

Section 63.2-1526(A) of the Code of Virginia uses the words "informal conference or consultation in order for such person to informally present" information to the local department. This language suggests a discussion format as opposed to the more formal question and answer form of the administrative hearing. A consultation with the appellant could be done over the telephone, negating the problems inherent in scheduling a face to face conference.

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Local departments who have difficulty "acting" within the 30 day period may wish to consider using an acknowledgement letter to re-schedule the informal conference. It may also include the option for a telephone conference. (See "Appendices-Letter #3") The director/designee must remember that the investigating worker shall be present at the conference, which means that the local department must have the capacity to conduct conference calls in order to conduct telephone hearings.

Presentation of documentation with telephonic conferences may be handled by either requiring documentation to be submitted in advance of the conference, or by holding the record open for a specific period of time to receive the appellant's documentation.

C. Attendance

Department policy indicates that the worker who made the disposition must attend the conference. This is consistent with the fact that the policy states that resolving differences between the agency and the appellant concerning the investigation and the disposition are among the purposes of the conference.

The appellant has a right to attend the conference, and the appellant has the right to be represented by an attorney at the conference. Legal counsel may appear in lieu of the appellant. This has occurred on occasion and should be permitted.

Beyond the investigating worker, the appellant, and his /her representative, the attendance of any other individuals at the hearing, as witnesses or otherwise, is completely at the discretion of the local department. If the worker's supervisor is not the designee, it is recommended that the supervisor attend the conference with worker.

Although the appellant has the right to be represented at the conference, that does not mean that the director or designee must allow the appellant's representative to change the nature of the local conference. The director or designee, under extreme circumstances, may request that the appellant's representative leave the proceedings, or in the alternative, terminate the local conference.

The local conference is for the appellant and the confidentiality of the victim and the appellant must be of paramount consideration when allowing for requests of external parties to attend the conference. For example, it would be inappropriate to allow the representative of the school division to attend a conference which relates to a school employee, unless the attendance of the representative is at the request of the appellant.

Similarly, it is solely within the discretion of the director to determine whether it is appropriate to allow children to testify at the local conference, or to specify the conditions under which the child's testimony would be taken. However, allowing the victim child to present information at a local conference is discouraged, as it presents concerns for the re-victimization of the child, and credibility of information given during the initial investigation. If it is determined to have children testify, then the director or designee would have the authority to require everyone to leave the room while he or she listens to the child's testimony.

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D. Evidence

Prior to the local conference, the appellant shall have the opportunity to review the record pursuant to Code of Virginia 63.2-1526(A). Upon written request the local department shall provide the appellant all information used in making its determination with the exception of disclosing information that may endanger the safety of a child or collaterals. In addition, information prohibited from being disclosed by state or federal law should not be released, such as revealing the name of the complainant.

The local department may release an audio tape recorded interview with the alleged victim. However, the release must be conducted in the same manner as releasing any other confidential information for the purposes of the local conference. The appellant is entitled to a copy of the audio tape recording unless disclosure of the contents endangers the safety of the child or collateral witnesses pursuant to Code of Virginia 63.2-1526(A). The tape may need to be transcribed and redacted.

Section 22 VAC 40-705-190(G)(2) of the Virginia Administrative Code states that the appellant is entitled to present testimony of witnesses, and to submit any additional documentation of arguments that he or she deems relevant to the disposition. Policy further states that such documentation needs to be included as part of the record.

This language reflects the fact that the local conference is the appellant's opportunity to tell the agency why he/she disagrees with their finding. However, the presiding officer has great latitude in determining the context within which this takes place.

IV. LOCAL CONFERENCE DECISION

The local director, or designee, has the authority to amend the record following the local conference. The local director or designee must notify the appellant, the parents of the involved child, and all others who received notification initially of the results of the local conference by certified mail within 45 days of the receipt of the written request from the appellant unless the time frame has been extended. The written decision shall contain the following information (see Appendix for suggested outline):

- Introductions to include: those present, time, place, and specify if conference was granted beyond the required 30 days and why.
- Specify the disposition or other issues that the client is appealing.
- List client's objections.
- Describe the worker's response to the objections.
- Describe new evidence/testimony.
- Describe what action will be taken on the request for amendment.
- Describe what further appeal rights exist.

If the director or designee amends or reverses the original disposition following the local conference, the local department must notify all prior recipients of the initial finding of the revised disposition. This notification should be in writing.

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The local department must report all requests for amendment of the record to OASIS.

V. FACT SHEET:

1. Finding the law: The statutory authority for a person seeking review of a local department's finding of abuse or neglect can be found in VA Code 63.2-1526(A). The regulatory section pertaining to appeals of findings of abuse and neglect can be found in 22 VAC 40-705-190. The definition section of 22 VAC 40-705-10 defines administrative appeal rights.
2. The local conference is mandatory; the local department must make good efforts to schedule and conduct a local conference. Failure to conduct a local conference may affect the outcome of a circuit court appeal.
3. If the appellant does not appear for a scheduled conference without good cause the request should be considered as abandoned by the appellant. The local department should mail a letter to the appellant informing him/her that their request is being dismissed and his/her right to request an administrative hearing will be forfeited.
4. The director or designee may allow the local conference to be recorded by either party.
5. If the hearing is conducted after the appellant has been arrested, relative to the subject matter of the investigation, the director or designee should consult with agency counsel whether Miranda warnings should be given to the appellant, before the appellant testifies.
6. A local department in Virginia does not have jurisdiction over abuse or neglect which does not occur in Virginia. However, valid complaints have been accepted when the abuse occurred in other states to Virginia residents, and the corresponding state will assist in the investigation process.

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***APPENDICES:
RECOMMENDED DOCUMENTS FOR LOCAL CONFERENCE APPEALS***

THE LOCAL CONFERENCE CPS APPEALS HANDBOOK

ACKNOWLEDGEMENT LETTER #1

April 22, 2004

Fred F. Appellant
123 Unknown Lane
Anywhere, VA 54321

Dear Mr. Appellant:

Your request to amend your record, relative to the disposition of “Founded-Physical Abuse” made on April 1, 2004, was received by this local department of social services on April 21, 2004.

According to the policy of the Department of Social Services, our agency must schedule, hear and decide what action to take relative to your request in the next 45 days. You will receive a written decision on your request on or before June 5, 2004. If you do not receive a written decision on your request on or before June 5, 2004, you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 7 North Eighth Street, Richmond, Virginia 23219.

You will be contacted in the next few days to schedule a conference date and time.

Sincerely,

CPS Supervisor

LDSS Director

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ACKNOWLEDGEMENT LETTER #2 (FROM A HEARING OFFICER: DESIGNEE)

April 22, 2004

Fred F. Appellant
123 Unknown Lane
Anywhere, VA 54321

Dear Mr. Appellant:

Your request to appeal the Child Protection Services founded disposition of sexual abuse, level 1, made on April 1, 2004 was received by this agency on April 21, 2004. We must schedule, hear, and decide on your request of amendment within 45 days after receiving such request. Please inform the social worker prior to the local conference if an attorney will present you.

The scheduled local conference to hear your appeal has been set for May 3, 2004 at 10:00am, at the Local Department of Social Services, in the conference room on the 1st floor. The address is 900 West Agency Street, Richmond, Virginia. Please sign in at the front desk and the social worker will escort you to the conference room.

Under the policy of the Virginia Department of Social Services, you must receive a written decision regarding your request on or before June 5, 2004. If you do not receive a written decision on your request on or before June 5, 2004 you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 7 North Eighth Street, Richmond, Virginia 23219.

If you would like to review your records prior to the local conference or have questions, please contact Ms. Social Worker at (123) 456-7890.

Sincerely,

Hearing Officer

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ACKNOWLEDGEMENT LETTER #3 TELEPHONE CONFERENCE

April 22, 2004

Fred F. Appellant
100 Unknown Lane
Richmond, Virginia 54321

Dear Mr. Appellant:

Your request for an amendment of the record, regarding the disposition of "Founded-Physical Abuse" rendered on April 1, 2004, was received in this office on April 21, 2004.

According to the policy of the Department of Social Services, our agency must schedule, hear and decide what action to take relative to your request in the next 45 days. If you do not receive a written decision on your request on or before June 5, 2004, you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 7 North Eighth Street, Richmond, Virginia 23219.

In response to your request, a telephone conference will be conducted on May 3, 2004 at 10:00 am, at which time I will call you at your home telephone number (123-456-7890), unless you designate a different location before May 3, 2004.

The Child Protective Services Worker will be available during the telephone conference. You have a right to review your case record prior to the conference, pursuant to Code of Virginia 63.2-1526(A). However, you must notify our agency of your desire to review the case record at least five days before the scheduled conference.

If you have documentation which you wish to submit during the conference, request that it is delivered to the department three days before the conference date. The record may be held open, upon request, for three days after the conference for you to submit documentation which become relevant during the conference.

Failure to be available at the time and date noted above will result in your request to amend the record being dismissed as abandoned, and loss of the right to request an administrative hearing.

Sincerely,

CPS Supervisor

LDSS Director

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ACKNOWLEDGEMENT LETTER #4 CRIMINAL CHARGES PENDING

April 22, 2004

Re: CPS Case

Fred F. Appellant
123 Unknown Lane
Anywhere, VA 54321

Dear Mr. Appellant:

Your request to appeal the Child Protective Services (CPS) founded disposition of sexual abuse, level 1, was received on April 19, 2004.

The CPS appeal policy is based on the Code of Virginia 63.2-1526 (A). According to Code, the local conference is suspended pending the completion of criminal proceedings when the appellant is under prosecution in criminal court for the same incident with the same victim. The access to the case record is also suspended. Once the criminal process is complete, you have 30 days to reinstate the appeal process.

Upon notification that the court process in the criminal proceedings has been completed, our agency will send you a letter notifying you of your right to appeal the above-reference case within 30 days. Please contact Ms. CPS Worker at (123) 456-7890 if you have any questions.

Sincerely,

CPS Worker

CPS Supervisor

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CPS LOCAL CONFERENCE RESULTS: SUGGESTED OUTLINE

CASE NAME:
COMPLAINT DATE:
REFERRAL NUMBER:
SUBJECT CHILDREN (NAME&DOB)

1) INTRODUCTION

An informal Child Protective Service conference was held at Local Dept. of Social Services on **(date)**.

Present were:
Name Title

2) CASE SUMMARY

A disposition of **(type of abuse/neglect)** was made based upon the following evidence:

3) APPELLANT'S RESPONSE

The following new information was provided by the appellant:

Documentary evidence presented by the appellant included:

Appellant's arguments and objections to the disposition were:

4) WORKER'S RESPONSE

The worker's arguments and supports of the disposition were:

5) FINDING

Following the agency conference, a decision was made to **(upheld, amend, overturn disposition)** based on the following reasons:

6) RIGHT OF APPEAL **(only if founded disposition is upheld)**

If you are not satisfied with the outcome of the local conference, you may appeal this finding by writing to the Commissioner of the Virginia Department of Social Services at the following address:

Commissioner
VDSS
7 N. Eighth Street
Richmond, Virginia 23219

Your request must be made within 30 days of your receipt of this conference decision.

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Agency Director

WRITTEN DECISION #1

June 5, 2004

Fred and Wilma Appellant
123 Unknown Lane
Anywhere, VA 54321

Dear Mr. and Mrs. Appellant:

After a careful review of all the available evidence, the Founded Level One disposition of Sexual Abuse (Molestation) involving Pebbles Rock is amended to Founded, Level One, Abuser Unknown. Reasons for this decision include:

1. Pebbles displays many sexual behaviors consistent with a victim of sexual abuse.
2. The CSBI inventory was clinically significant for behaviors highly correlated with sexual abuse.
3. Pebbles made some statements that her Nana (Wilma) and Papa (Fred) were sexual abusers, but she made a significant number of responses to questions indicating they (Nana and Papa) were sexually abusing her, sometimes within the same interview. In addition, Pebbles demonstrated some difficulty in the forensic interview distinguishing between “real” and “make believe” and in not “guessing” answers to questions.
4. Mrs. Rock, mother, alleges there is “clinical proof” that she and Pebbles are victims of sexual abuse by Mrs. Appellant. No such “proof” is offered in the record.
5. Mrs. Rock claimed that Pebbles was examined at Kids Hospital at the age of two for suspected sexual abuse and that there were physical findings. No record of this claim was produced for Child Protective Services.
6. Dr. Rubble administered the BASC parent rating scales and found that Mrs. Rock over-reported Pebbles’ symptoms resulting in an invalid profile.
7. Lilly Boulder, a friend of Mrs. Rock for over 16 years, testified that in 2001 Mrs. Rock expressed fears that Pebbles was molested. Ms. Boulder witnessed Mrs. Rock asking Pebbles “where does Nana touch you?” and “Nana is a witch, isn’t she?” and other suggestive questions.
8. Ruby Gem, a family friend of the Appellants and the Rocks since 1999, testified that in a conversation with Mrs. Rock, she expressed concern that Mr. Rock was “playing” with Pebbles’ private parts. Mrs. Rock went on to state Mr. Rocks was frequently up late on the computer watching pornography.
9. While polygraph information cannot be considered in a CPS decision, it is significant Mr. Appellant, who was suspended from his teaching position, was reinstated after a review of polygraph evidence on Mr. and Mrs. Appellant, and Mr. and Mrs. Rocks were submitted for review by the Commonwealth Attorney.

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Fred and Wilma Appellant

June 5, 2004

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The “abuser unknown” disposition only means the evidence, at this time, did not meet the preponderance standard for naming both of you in a Child Protective Services finding of sexual abuse. If new information is received, another investigation could be initiated. If the original information were deemed still pertinent and relevant, the information from the original interviews could be incorporated into the new investigation.

It will be important for both of you to follow the suggested guidelines from Pebbles’ therapist and social worker regarding any contact with your grandchild. This would be in the child’s best interest and also to protect you from further allegations of abuse.

Sincerely,

LDSS Director

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WRITTEN DECISION #2

June 5, 2004

Mrs. Jane Jetson
123 Unknown Lane
Anywhere, VA 54321

Dear Mrs. Jane Jetson:

After a careful review of all the available information in this case, the Founded/Level Two disposition of Physical Neglect/Lack of Adequate Supervision involving Judy Jetson, Elroy Jetson, Astro Jetson, and George Jetson are upheld. This is based on:

1. All children and parent agree that the children have been left unsupervised for periods ranging from 1 to 2 hours on 10 or more occasions.
2. All children agree that Judy, age 9, was perceived to be in "in charge" when any of them were left by their mother.
3. George, age 5, needed immediate medical attention because he was playing on the bunk beds and "busted" his bottom lip while Judy was "in charge."
4. Elroy, age 7, is diagnosed with ADHD.
5. All children describe constant fighting between Astro, age 6, and George. This fighting included kicking, biting, and pulling hair.
6. It is not in the best interest of the children to leave them home alone with Judy, due to her age, developmental limitations, and experience. To expect a 9 year old child to be in charge of siblings, especially ones close in age is clearly beyond Judy's capabilities.

If you wish to appeal this disposition further, you must within 30 calendar days write to:

Commissioner
Virginia Department of Social Services
7 North Eighth Street
Richmond, Virginia 23219

Please mention in your appeal request the investigative worker's name and the date you signed for this certified letter.

Sincerely,

LDSS Director

CHILD PROTECTIVE SERVICES (CPS) APPEALS HANDBOOK

STATE LEVEL ADMINISTRATIVE HEARINGS

*Revised December, 2007
Appeals & Fair Hearings Unit*



CHILD PROTECTIVE SERVICES (CPS) APPEALS HANDBOOK

STATE LEVEL ADMINISTRATIVE HEARINGS

I. PURPOSE

This handbook is intended to give staff throughout the social services system a better understanding of the state level administrative hearings process. This should ensure better, more consistent information on both the local and state levels.

This is the second of two handbooks which deal with the administrative hearings process. The first handbook provided direction to local agencies on the conduct of the local conference. That handbook was issued in September, 1992.

II. OVERVIEW OF APPEALS PROCESS

Section 63.2-1526 of the Code of Virginia creates a Child Protective Services appeals process. The first level is the informal local conference conducted by the director of the local social services agency, or his or her designee. The appellant may request a local conference if he or she believes that there is irrelevant or inaccurate information contained in the local agency's disposition.

The second level is the administrative hearing conducted by state staff and is the focus of this handbook. If the results of the local conference were unsatisfactory to the appellant, or if the Agency fails to act within 45 days of receiving the request, the appellant may request a state level hearing.

The third level in the appeals process is the court system. The circuit court which has jurisdiction over the locality where the appellant resides or where the disposition was made would be the next step if the appellant still believes that irrelevant or inaccurate information is contained in the case disposition. In the circuit court and in the appellate courts, the Department of Social Services is represented by the Office of the Attorney General

The decision of the circuit court may be appealed by either party to the Virginia Court of Appeals, and from there by petition to the Virginia Supreme Court.

Each level of the appeals process is designed to give the appellant a progressively more formal means to voice concerns over the disposition reached by the local social services agency in the investigation of a CPS complaint. Time frames for either the respective agencies, or the appellant, to act are specified in this section of the Code of Virginia and in applicable regulations promulgated by the State Board of Social Services as well as in the applicable Rules of Court.

III. VALIDATION PROCEDURES

All *state-level* appeal requests are made to the Commissioner of the Department of Social Services. Only the person who is the alleged abuser or neglecter may request an appeal in situations where the investigation has resulted in a founded disposition.

The program support technician in the CPS section of the Appeals Unit will contact the local agency to determine whether the appeal is valid. A valid appeal must meet the following criteria:

- A local conference was conducted, and a disposition rendered; and
- The appellant requested an appeal from the Commissioner of the Department of Social Services within 30 days of receiving the decision of the local conference, or
- The local agency failed to conduct a local conference or render a decision within the prescribed time frame. Such appeal requests must be made by the appellant within 30 days thereafter.

An appeal will be considered timely if postmarked by the appellant within 30 days of the appellant's receipt of the local conference decision as determined by the certified mail return receipt. Faxed or e-mailed appeal requests must be received by the Appeals Unit within 30 days of the appellant's actual receipt of the local conference decision.

The program support technician will notify the appellant and the local agency if the appeal is untimely or if a local conference needs to be conducted.

The appeals process is stayed while criminal charges are pending. Once the charges are completed in the circuit court, the appeals process is resumed. The expectation that criminal charges will be forthcoming or are expected does not trigger a stay. Further, in cases of deferred dispositions, the prosecution is deemed to be complete once the court enters an order deferring disposition. The local agency must notify the appellant and contact the state appeals office once the criminal case is concluded.

In cases where the related criminal charges are prosecuted in the juvenile or general district court, the charges are considered completed when thirty days have passed since the final order in the case and there is no appeal by the defendant to the circuit court.

In the event the appellant alleges that she/he either did not receive notification or disposition or notification of local conference results, the Hearing Officer will schedule a *validation hearing* to hear testimony on behalf of both the Appellant and the local agency to determine whether a preponderance of evidence exists as to whether the Appellant made a timely appeal request. The Agency may waive the validation hearing. In that case,

the appellant will be granted a state appeal hearing. See Appendix [Validation Appeals Fact Sheet].

The program support technician will notify the On-line Automated Services Information System (OASIS) upon receipt of the appellant's request for an administrative appeal either by manually updating the system or requesting that the system be updated by the OASIS help desk.

IV. SCHEDULING PROCEDURES

The hearing officer will schedule the hearing within 45 days of the appellant's request to the Commissioner, unless there are delays due to subpoena requests, depositions or scheduling problems. The appellant may waive time deadlines. A telephonic hearing may be conducted. This means that the appellant and the agency are located at one site, usually the agency, and the hearing officer conducts the hearing via conference call from his/her office. If the appellant shows good cause, they may participate in the hearing from a remote site.

Generally, the hearing officer will attempt to contact the parties to determine a convenient date, time, and location. At times, the hearing officer may be unable to contact the social worker or attorneys prior to setting a date for the hearing. The hearing officer may utilize a self-scheduling method, meaning that the hearing officer may schedule several hearings on one date at a centralized location, without first consulting the parties. The hearing officer will schedule the hearing, giving ample notice of the date and the location.

The hearing officer will notify the appellant by letter and copy the agency concerning the date, time, and location of the hearing, and notify the parties whether the hearing is face-to-face or by telephone.

CPS appellants with limited English proficiency (LEP) will be provided a language interpreter for the administrative hearing. Prior to the hearing being scheduled, the local agency and the appellant should inform the hearing officer of any need for interpreter services. The hearing officer may ask the local agency for assistance in arranging these services. The appellant also has the right to provide their own interpreter if desired and if the person is competent to provide this service.

In the event that the appellant or a witness has special needs in order to communicate during the hearing, the hearing officer will assist in arranging for interpreter services for the administrative hearing. The request for assistance with these services must be submitted to the hearing officer upon receipt of the letter scheduling the hearing.

The appellant may waive the right to a hearing and request that the hearing officer's decision be based on the record. The appellant may submit a written statement in lieu of oral testimony. The agency will be given the opportunity to review any additional

evidence submitted by the appellant and will be given the opportunity to respond. The hearing officer will render a decision based on the evidence and testimony within 60 days of the close of evidence.

The hearing officer has the discretion to reschedule a hearing for good cause at the request of either the appellant or the agency. The request must be promptly noted. The hearing officer will notify, by letter, all parties of the continuance and schedule the hearing for the next convenient date.

If the appellant fails to appear for the hearing without notifying the hearing officer, the hearing will take place and the hearing officer's decision will be based on the available evidence. The hearing officer maintains the right to reschedule the hearing if the appellant, with justifiable cause concerning their failure to appear, promptly notifies the hearing officer of his/her desire to reschedule.

V. PREPARATION OF CASE RECORD

The agency must, within twenty-one days of its receipt of the letter acknowledging receipt of a valid appeal, forward to the hearing officer a copy of the investigative record, to include a properly redacted version of the narrative, any supporting documents upon which the agency relied in making the disposition, correspondence with the appellant, including a copy of the letter notifying the appellant of the founded disposition, and a summary and results of the local conference. The agency must forward all evidence presented by the parties at the local conference. The local agency may hold photographs that are part of the investigative record until the hearing, at which time they may be introduced as evidence. The local agency is strongly encouraged to provide the appellant and hearing officer color photographs rather than black and white copies.

Redaction of records must comply with Virginia Code § 63.2-1526(A) and 22 VAC 40-705-190(H) (6), which provides in part: "Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released." References to the results of polygraph examinations should be redacted from the case record. Inappropriately or excessively redacted records will be not be considered by the hearing officer.

The hearing officer will not consider materials contained in the record which are not released to the appellant upon proper request.

A cover letter must be attached to the investigative record sent to the hearing officer listing the contents of the record. The local agency must send a copy of the cover letter to the appellant or to appellant's counsel. If the appellant wishes to view or receive a copy of the record, he/she must make this request to the local agency in writing.

VI. ATTENDANCE

The agency's presence at the administrative hearing can not be compelled by the hearing officer. The agency may rest its case upon the submission of the record to the hearing officer. However, agency representation is strongly encouraged as a means of strengthening the agency's case by enhancing the reasoning for its disposition, refuting information presented by the appellant and offering new information relevant to the case. Furthermore, if an agency representative does not attend the hearing, the hearing officer loses the opportunity to ask the representative questions which could potentially clarify areas of concern or solidify the agency's disposition.

An agency representative will be asked to give a summary of the investigative report. This is usually handled by the investigating worker, but may be presented by a supervisor or by counsel for the agency. The agency summary should include the following: the disposition(s) made, the name(s) and age(s) of the child(ren) involved, a synopsis of the investigation including the specific evidence relied upon in making the disposition, and the date and result of the local conference. The agency representative is then subject to questioning by the other party.

The investigating worker should be present at the hearing as he/she is most familiar with the case and will be able to relate the most thorough summary. At the hearing officer's discretion, the worker's supervisor and/or agency director may attend the hearing. Uninvolved agency staff, such as new workers, may attend the hearing as observers if the appellant does not object.

VII. WITNESSES

The appellant and the local agency may request witnesses to be present at the hearing. After a party's written motion and showing of good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witness at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed, or required to testify. Upon petition, the juvenile and domestic relations district court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision. The agency and/or the appellant may call witnesses to strengthen their case, to refute information presented, or to offer new, relevant information.

Upon providing reasonable notice to the other party and to the hearing officer, a party may, at his own expense depose a non-party, and submit that deposition at, or prior to, the

hearing. A deposition is testimony given outside the hearing, under oath, which is transcribed by a court reporter. Each party must afford the other party an opportunity to attend the deposition by providing that party with notice of the deposition place and time. The hearing officer is authorized to determine the number of depositions that will be allowed.

Parties may be asked to briefly summarize the evidence to be presented by their witnesses. The hearing officer will then determine the relevance of a witness' testimony and will decide whether or not that witness will be permitted to testify. The hearing officer may limit the number of witnesses, particularly character witnesses, who will be allowed to testify.

Children are generally not permitted to testify at the administrative hearing. However, exceptions may be made at the discretion of the hearing officer. The hearing officer will determine whether allowing a child to testify would be in the best interest of that child before permitting him or her to testify. Some of the factors considered in making this determination include: whether the case involves an in-family or out-of-family abuse allegation; the age of child; whether the child was a victim or a witness; the mental capabilities/functioning of the child; the type of abuse alleged; and the willingness of the child and of the child's parent/guardian for the child to testify. The hearing officer may alter the format of the hearing in order to accommodate the child witness.

Witnesses are subject to questioning by the other party. Witnesses are not considered parties to the hearing and may not be permitted to remain throughout the hearing. The hearing officer has the discretion to exclude witnesses from the hearing except to present testimony and answer questions by the other party.

In out-of-family cases, parents of victim children may be called as witnesses, provided that their testimony is relevant. It must be made clear to parents in such cases that they are not parties to the appeal. Parents must be advised that they are being called to provide relevant testimony pertaining to the disposition(s). Parents must be aware that they may not sit through the entire hearing and that they will not be given an opportunity to confront or question the appellant at the hearing.

VIII. EVIDENCE

There are no rules of evidence in CPS hearings, other than that the testimony or documentation presented be relevant to the issue under appeal and be substantially credible or reliable. If the relevance of the information being presented is questioned, the hearing officer will decide the issue.

The local agency has the responsibility to provide as complete and accurate information as possible, and to show how that information supports its disposition.

The hearing officer will accept relevant evidence (such as psychological reports or transcripts from court hearings) from either the local agency or the appellant, regardless of whether such information was available to the local agency during its investigation. Evidence about the results of polygraph examinations is inadmissible in any form.

The hearing officer has the authority to assign weight to all evidence presented at the hearing. In the process of weighing such evidence, the hearing officer evaluates the credibility of witnesses and the reliability of documentary evidence. Most appeal cases involve an allegation by the complainant and/or alleged victim, and a denial by the appellant. Given these circumstances, the hearing officer must carefully evaluate any corroborative evidence in evaluating the validity of either the allegation or the denial.

IX. ROLE OF THE HEARING OFFICER

The hearing officer controls the hearing and maintains order. The hearing officer is an impartial fact finder and decision maker. The hearing officer makes every effort to maintain a completely unbiased posture in conducting the hearing and rendering an appeal decision. During the hearing, the hearing officer will address agency staff and the appellant by their title and last names. Agency staff should address the hearing officer in the same manner.

A. HEARING PROCEDURE

The hearing officer may hold a brief pre-hearing conference to address procedural issues, such as the number of witnesses. The hearing usually follows this order:

1. Introductory statement by the hearing officer and explanation of the hearing procedure. Identification of everyone present for the record.
2. Opening statement by the local agency about its disposition.
3. If requested, an opening statement by the appellant stating the reason for the appeal. It may include a brief summary of the evidence to be presented.
4. Introduction of the agency's record into evidence, testimony by the agency and any agency witnesses, with questioning by the appellant and/or the hearing officer.
5. Presentation of the appellant's case with questioning by the agency and/or the hearing officer.
6. Closing statements and arguments if desired by either party.

The hearing officer makes an audio tape of the hearing, which is not transcribed unless the case is appealed to the circuit court. In the event of an appeal to the circuit court, the transcript becomes a part of the case record filed with the court. Either the local agency or the appellant may tape record the hearing. Either party may bring a court reporter at that party's expense. If a court reporter is provided, the court reporter's transcript replaces the transcript of the hearing officer's tape recording as the official record of the hearing. Either party may request copies of the audio cassette tapes made by the hearing officer during the hearing.

B. CONTINUANCES/RECONVENING THE HEARING

The hearing officer may, upon request, continue the hearing to a later time or date, and may also reconvene the hearing if necessary. This may occur when new evidence is provided which the other party wishes to examine at length, or based on other needs for a continuance.

C. HOLDING THE RECORD OPEN

The hearing record is usually closed to the receipt of evidence at the end of the hearing. The record may, however, be held open for up to fourteen days following the hearing to receive additional information/evidence from either party. The hearing officer will hold the record open to receive additional evidence if the request is made by either party before the conclusion of the hearing. A determination will be made during the hearing as to exactly what evidence the record is being held open to receive and a deadline will be set for this evidence to be provided.

Any additional evidence submitted to the hearing officer during the time the record is held open must also be provided to the other party, with an opportunity to respond to this evidence.

D. REMANDING THE CASE

If the appellant presents information at the hearing which was not previously available to the local agency and which may have resulted in a different disposition, the hearing officer may remand the case to the local agency for reconsideration. The local agency has 14 days to reconsider the case and notify the appellant and the hearing officer of their decision. If the local agency fails to amend the disposition to the appellant's satisfaction within the 14 days, the hearing officer will render a decision on the appeal. The hearing is not reconvened.

The decision to remand a case is at the discretion of the hearing officer and is exercised only after the appellant has concluded presenting his or her evidence.

X. STATE ADMINISTRATIVE APPEAL DECISION:

Following the conclusion of the hearing (or the close of evidence if the record has been held open to receive additional evidence), the hearing officer will prepare a written decision addressing each disposition involved in the appeal. The decision of the hearing officer must be issued to the appellant within 60 days of the close of evidence on the case.

The hearing officer's decision is sent to the appellant or the appellant's attorney by certified mail. A copy of the decision is sent to the agency and to the attorneys by first class mail at the same time. If as a result of the state administrative appeal the original disposition is amended, the parents of the involved child(ren) and all others who received notification initially must be notified of the amendment of the agency's finding.

The decision is divided into several sections. A copy of the decision format is included in the Appendix section of this handbook. The following is a brief description of each section of the appeal decision.

- **Authority** - This section provides the statutory authority for the administrative appeals process.
- **Procedural History** - This section provides a chronological account of each level of the case beginning with the initial complaint and disposition(s) by the local agency, through the local conference and the administrative hearing at the state level.
- **Summary of Evidence** - This section provides a summary of all of the relevant evidence offered at the administrative hearing. The agency's evidence and testimony are summarized, including the information from the record upon which it relied in making the disposition(s). The evidence and testimony offered by the appellant and his/her witnesses is also summarized in this section. Documentary evidence will be addressed as Agency's or Appellant's exhibits #1, 2, 3, etc. Evidence is labeled in this manner for identification purposes.
- **Applicable Statutory and Regulatory Provisions** - Sets out the statutory, regulatory and policy definitions and provisions relating to the disposition and the hearing officer's decision.
- **Analysis** - Addresses appellant's relevant arguments, provides the reasoning for the appeal decision. The section will address whether or not the agency's disposition(s) is supported by a preponderance of the evidence.

- **Findings of Fact** - This section lists the facts supported by the evidence, as determined by the hearing officer.
- **Decision** - This section contains the results of the appeal. Each disposition which has been appealed will be addressed in this section.
- **Right of Review** - This section provides the basis for the appellant's right to appeal the decision further. This section will only be included in decisions which do not completely overturn the agency's disposition(s).

The hearing officer's decision will sustain the agency's disposition, amend the disposition from founded or amend the level of a founded disposition, or reverse the disposition to unfounded. The decision of the hearing officer is final and the appeal cannot be reopened or "re-heard" at the request of either party.

Once the administrative appeal decision is rendered, the hearing officer will also notify OASIS of the outcome of the appeal at the State level. OASIS is updated to reflect any overturned or amended dispositions, including amended levels of founded dispositions.

XI. CIRCUIT COURT APPEALS

The next level in the appeal process following the administrative hearing is an appeal to the circuit court. This is the only method by which an administrative CPS decision may be appealed further. It is a review of the record, not a de novo (new) hearing. Only the appellant in a CPS case may appeal the hearing officer's decision. The agency cannot appeal the decision, nor can the victim or the victim's parents if they were not the appellants.

Once a valid Notice of Appeal and a Petition have been filed, the state appeals office prepares two copies of the entire hearing record, including a transcript of the hearing. If a court reporter was provided by either party, the transcript of the court reporter is used. The records are submitted to the Office of the Attorney General and the appeal is assigned to an Assistant Attorney General who files one copy of the record with the appropriate circuit court for that jurisdiction.

At the circuit court level, the decision of the state hearing officer is argued by the Office of the Attorney General. To initiate an appeal to the circuit court, the appellant must submit a Notice of Appeal to the Commissioner of the Department of Social Services within 30 days of receipt of the hearing officer's decision. The appellant must also file a petition with the circuit court in his/her locality within 30 days following submission of the Notice of Appeal, and ensure that the Commissioner is served with this Petition.